

IC 15-7-7

Chapter 7. Repurchase of Farm or Industrial Machinery Inventory

IC 15-7-7-1

Application of chapter

Sec. 1. (a) This chapter applies to the following:

- (1) contracts that may be terminated or altered at will; and
- (2) contracts formed or renewed after June 30, 1989.

(b) This chapter shall not be construed to impair the obligation of a contract in violation of Article 1, Section 24 of the Constitution of the State of Indiana.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-2

"All terrain vehicle" defined

Sec. 2. As used in this chapter, "all terrain vehicle" means a motorized off highway vehicle:

- (1) that is fifty (50) inches or less in width;
- (2) that has a dry weight of six hundred (600) pounds or less;
- (3) that is designed for travel on at least three (3) low pressure tires;
- (4) that is designed for operator use only with no passengers;
- (5) that has a seat or saddle designed to be straddled by the operator; and
- (6) that has handlebars for steering control.

The term includes parts, equipment, or attachments sold with the vehicle.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-3

"Current net price" defined

Sec. 3. As used in this chapter, "current net price" means the price listed by a wholesaler, manufacturer, or distributor of inventory in effect at the time a contract is terminated, less an applicable trade or cash discount.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-4

"Farm or industrial machinery" defined

Sec. 4. (a) As used in this chapter, "farm or industrial machinery" means:

- (1) farm implements;
- (2) tractors;
- (3) farm machinery;
- (4) utility and industrial equipment;
- (5) construction machinery, including track and wheel tractors, motor graders, and excavators; or
- (6) attachments or repair parts for one (1) or more machines referred to in subdivisions (1) through (5).

(b) As used in this chapter, "farm or industrial machinery" does

not include all terrain vehicles.

As added by P.L.183-1989, SEC.1. Amended by P.L.115-1990, SEC.1.

IC 15-7-7-5

"Inventory" defined

Sec. 5. As used in this chapter, "inventory" means farm or industrial machinery held by a retailer.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-6

"Net cost" defined

Sec. 6. As used in this chapter, "net cost" means the price a retailer paid to a wholesaler, manufacturer, or distributor for inventory, minus any discounts, retainage, and prepaid freight or return freight.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-7

"Person" defined

Sec. 7. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, a trust, or an unincorporated association.

As added by P.L.183-1989, SEC.1. Amended by P.L.8-1993, SEC.249.

IC 15-7-7-8

"Retailer" defined

Sec. 8. (a) As used in this chapter, "retailer" means a person engaged in the business of selling, at retail, farm or industrial machinery.

(b) The term does not include a retail seller of:

(1) petroleum products, if the sale of petroleum products is the primary purpose of the retail seller's business;

(2) motor vehicles (as defined in IC 9-13-2-105(a)); or

(3) automotive care and replacement products.

(c) The term includes the heirs, personal representative, guardian, or receiver of a retailer.

As added by P.L.183-1989, SEC.1. Amended by P.L.2-1991, SEC.73.

IC 15-7-7-9

"Retainage" defined

Sec. 9. As used in this chapter, "retainage" refers to various purchase, invoice, and other discounts held by the supplier and due the retailer at a later time.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-10

Repurchase required; exception

Sec. 10. (a) Upon the termination of a written or unwritten

contract between a retailer and a wholesaler, manufacturer, or distributor of farm or industrial machinery under which the retailer had agreed to maintain an inventory, the wholesaler, manufacturer, or distributor shall repurchase the inventory of the retailer under section 11 of this chapter.

(b) If the retailer has an outstanding debt to the wholesaler, manufacturer, or distributor, the amount to be paid in repurchase of the inventory may be credited to the retailer's account.

(c) The requirement under subsection (a) that a wholesaler, manufacturer, or distributor repurchase inventory does not apply when a contract is terminated based upon:

- (1) the conviction of the retailer (or a principal owner or operator of the retailer) of an offense involving theft, dishonesty, or false statement; or
- (2) a fraudulent misrepresentation by the retailer to the wholesaler, manufacturer, or distributor that is material to the contract.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-11

Machinery to be repurchased; proof of purchase

Sec. 11. (a) Except as provided in section 14 of this chapter, a wholesaler, manufacturer, or distributor shall repurchase the farm or industrial machinery that:

- (1) the retailer previously purchased from the wholesaler, manufacturer, or distributor; and
- (2) the retailer held as inventory on the date of the termination of the contract.

(b) For the purposes of subsection (a)(1), proof of purchase from the supplier may include retail invoices from the supplier or a reference to an item in a current or past supplier price book.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-12

Repurchase price; freight charges

Sec. 12. (a) The price for a repurchase must equal:

- (1) one hundred percent (100%) of the net cost of all new, unsold, undamaged, and complete farm or industrial machinery (except repair parts); and
- (2) one hundred percent (100%) of the current net price of all new, unused, and undamaged repair parts.

(b) A wholesaler, manufacturer, or distributor that is required to repurchase farm or industrial machinery from a retailer under this chapter shall pay freight charges incurred in shipping the farm or industrial machinery (except repair parts) back to the wholesaler, manufacturer, or distributor. However, the retailer:

- (1) shall pay freight charges incurred in shipping repair parts that are repurchased under this chapter back to the wholesaler, manufacturer, or distributor; and
- (2) is responsible for the packaging of all farm or industrial

machinery that is repurchased from the retailer under this chapter in preparation for the shipment of that farm or industrial machinery back to the wholesaler, manufacturer, or distributor.
As added by P.L.183-1989, SEC.1.

IC 15-7-7-13

Transfer of title

Sec. 13. Upon the payment to the retailer of the repurchase price under section 12 of this chapter, the title to the inventory passes to the wholesaler, manufacturer, or distributor.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-14

Exceptions; repurchases not required

Sec. 14. This chapter does not require the repurchase of any of the following:

- (1) A repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, batteries, solvents, or lubricants.
- (2) A single repair part that is priced as a set of two (2) or more items.
- (3) Inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer, or distributor, of clear title, free and clear of all claims, liens, and encumbrances.
- (4) Inventory that the retailer desires to keep, provided the retailer has a contractual right to keep the inventory.
- (5) Inventory that is not in a new, unused, and undamaged condition.
- (6) Inventory that was ordered by the retailer on or after the date of notification of termination of the contract.
- (7) Inventory that was acquired by the retailer from a source other than the wholesaler, manufacturer, or distributor.
- (8) Complete farm and industrial machinery, except repair parts, that were purchased thirty-six (36) months or more before the date of termination.
- (9) A repair part that is in a broken or damaged package, if that package is necessary for the resale of the repair part to a customer by a retailer.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-15

Civil liability

Sec. 15. A wholesaler, manufacturer, or distributor that fails or refuses to repurchase inventory as required under this chapter within ninety (90) days after the termination of the contract is liable in a civil action to the retailer for:

- (1) one hundred percent (100%) of the current net price of repair parts;
- (2) one hundred percent (100%) of the net cost of all other

- inventory;
- (3) the retailer's reasonable attorney's fees;
- (4) court costs; and
- (5) interest on the amounts determined under subdivisions (1) through (2), computed at a simple interest rate that is set by the court at no less than six percent (6%) per year and no more than ten percent (10%) per year, and beginning to accrue on the sixty-first day after the termination of the contract.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-16

Repurchase upon death of retailer

Sec. 16. Upon the death or incapacitation of a retailer (or, if the retailer is a corporation, the insolvency of the retailer), the retailer's heirs, personal representative, guardian, or receiver may compel a wholesaler, manufacturer, or distributor to repurchase the retailer's inventory under this chapter as if the retailer's contract had terminated. The retailer's heirs, personal representative, guardian, or receiver must exercise the right provided by this section within one hundred eighty (180) days after the retailer's death, incapacitation, or insolvency. However, this section does not require the repurchase of inventory if the heirs, personal representative, guardian, or receiver enters into a new contract with the wholesaler, manufacturer, or distributor.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-17

Inspection of inventory

Sec. 17. A retailer, wholesaler, manufacturer, or distributor may, in person or through a representative, inspect all inventory and certify its acceptability when it is packed for shipment to the wholesaler, manufacturer, or distributor under a repurchase under this chapter.

As added by P.L.183-1989, SEC.1.

IC 15-7-7-18

Security interests

Sec. 18. (a) This chapter does not affect a security interest that the wholesaler, manufacturer, or distributor may have in a retailer's inventory.

(b) IC 26-1-6.1 does not apply to a repurchase of inventory under this chapter.

As added by P.L.183-1989, SEC.1. Amended by P.L.144-1997, SEC.1.